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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CLAUDIA SCHAEFER,

Plaintiff and Appellant,

v.

DENNIS P. BLOCK,

Defendant and Respondent.

B280725

(Los Angeles County  
Super. Ct. No. BC642057)

APPEAL from an order of the Superior Court of  
Los Angeles County, Maureen Duffy-Lewis, Judge. Reversed.  
Claudia Schaefer, in pro. per., for Plaintiff and Appellant.  
Richard P. Jacobs for Defendant and Respondent Dennis P.  
Block.

## INTRODUCTION

Plaintiff Claudia Schaefer, in propria persona, appeals from the trial court's order granting defendant Dennis Block's special motion to strike her complaint under Code of Civil Procedure section 425.16, the anti-SLAPP statute.<sup>1</sup> Schaefer was the defendant in a prior unlawful detainer (UD) action filed by Block as the attorney for her landlord, James Clements. (Clements voluntarily dismissed that action.) Schaefer filed the instant action, including a claim for malicious prosecution against Clements and Block,<sup>2</sup> alleging that Block filed the UD action despite knowing it lacked probable cause, and maliciously refused to dismiss it for several months. The trial court granted Block's motion to strike, finding that Schaefer's malicious prosecution claim arose out of protected activity and Schaefer failed to demonstrate a probability of prevailing on that claim against Block.

Schaefer does not dispute that her malicious prosecution claim arose out of protected activity under section 425.16. However, she argues that she met her burden to establish a probability of prevailing on her claim, based on evidence that Block initiated and continued to pursue the UD action on behalf of Clements despite knowing it had no merit. We agree that Schaefer has satisfied her burden under the second prong of the anti-SLAPP statute. We therefore reverse and remand for further proceedings.

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<sup>1</sup>SLAPP is an acronym for Strategic Lawsuit Against Public Participation. All further statutory references are to the Code of Civil Procedure unless stated otherwise.

<sup>2</sup>Clements was not a party to the anti-SLAPP motion and is not a party to this appeal.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. *UD Action***

On August 19, 2016, Block, as attorney for Clements, filed a complaint in the UD action against Schaefer. The complaint alleged that Clements was the landlord-owner of the residence Schaefer had agreed to rent under a month-to-month tenancy pursuant to a written agreement. Clements also alleged he had served Schaefer with a 30-day notice to quit the premises on July 13, 2016. A copy of that notice was attached to the complaint as an exhibit. The notice, on letterhead from Block's law firm, gave Schaefer 30 days' notice as a "lodger" under a month-to-month tenancy, citing Civil Code section 1946.5.

Clements also attached a copy of the rental agreement as an exhibit to the complaint. The first page of the agreement contained a list of "Agreements we make when you share the house," including that "We share the housework each week." The second page listed a rental payment schedule, showing the first payment on September 2, 2013 and a move-in date of September 1, 2013.

Schaefer filed a demurrer in the UD action on October 19, 2016, arguing that she was entitled to a 60-day notice to quit the premises, rather than a 30-day notice, because she had been renting the premises for more than a year and was one of several tenants. (See Civil Code, §§ 1946.1, 1946.5.) The demurrer was overruled. Schaefer filed a motion for summary judgment on November 14, 2016, setting a hearing for November 21, 2016. She again argued that she was entitled to 60 days notice and therefore that the action must be dismissed for inadequate notice. Two days later, on November 16, 2016, Clements filed a request

to dismiss the UD action without prejudice. The action was accordingly dismissed.

**B. *Instant Action***

1. *Schaefer's Complaint*

Schaefer filed the instant action against Clements and Block in November 2016. In her verified complaint, she alleged claims for intentional infliction of emotional distress, retaliation, sexual harassment, invasion of privacy, and breach of contract, all against Clements; she also alleged a claim for malicious prosecution against Clements and Block.

Schaefer's complaint alleged that she was one of a group of four tenants renting the premises from Clements, who was the owner and landlord and also lived on the premises. She further alleged that Clements sexually harassed his tenants, including by installing video cameras "throughout the premises for the purpose of invading the privacy of his female tenants." When Schaefer complained, Clements retaliated with ongoing harassment and threats of eviction, culminating in filing the UD.

In support of her malicious prosecution claim, Schaefer alleged that Clements and Block knew before Block prepared the 30-day notice that it was "without probable cause, as Schaefer was entitled to a full 60-day notice under Civil Code 1946.1 and without any retaliatory motive." Despite knowing the notice was improper, Block allegedly "intended to maliciously pursue an unlawful detainer based upon it." Block also allegedly knew upon receiving Schaefer's discovery responses in the UD action that the notice was invalid. Schaefer alleged that Clements and Block continued to pursue the UD action, only dismissing it after receiving Schaefer's summary judgment motion.

Schaefer alleged she suffered permanent damage to her credit as a result of the UD action, along with other emotional and financial damages. She alleged that Block failed to inquire as to “the propriety of the UD prosecution,” and “intentionally and maliciously chose to prosecute the UD as long as possible, particularly with the intention to permanently damage Schaefer’s credit.”

2. *Anti-SLAPP motion*

Block filed a special motion to strike pursuant to section 425.16 on December 2, 2016. He argued that Schaefer’s claim for malicious prosecution against him was subject to the anti-SLAPP statute and that Schaefer could not establish a probability of prevailing on her claim. In particular, he argued that Schaefer could not establish malice.

In his accompanying declaration, Block stated that his office primarily handled unlawful detainer actions and had been doing so for 40 years. He contended Clements contacted his office to initiate an unlawful detainer action and provided information “which led me and my staff to believe that [Schaefer was] one of the ‘lodgers’ who lived in [Clements’] home.” Block never met Clements and claimed to have “no personal animosity” toward Schaefer. Rather, Block stated his actions “were undertaken in good faith with the belief that Ms. Schaefer was a lodger who therefore could be terminated by service of a 30-day notice to quit.” After initiating the UD action, Block claimed he “only discovered upon review of Ms. Schaefer’s discovery responses that [Clements] in fact had more than 1 person living in his home and renting rooms from him.” As a result, Block determined that Schaefer “was not merely a lodger (for whom a 30 day notice to quit could be given)”; thus, he requested dismissal of the UD

action. Block also stated that he subsequently served a 3-day notice to pay rent or quit and a 60-day notice to quit on Schaefer, and commenced a new unlawful detainer action based on that notice.

Schaefer opposed the motion to strike. She argued that Block “intentionally and knowingly prepared an illegal 30-day eviction notice” and that he knew she was entitled to a 60-day notice because she had been a tenant for over a year and because there were multiple tenants. In addition, she pointed to other evidence that Block had notice of these facts. She noted that in her October 19 demurrer to the UD action, she argued she was entitled to a 60-day notice based on the length of her tenancy and the number of renters. She also contended that Clement’s responses to her requests for production—served by Block on November 2, 2016—included documents making clear that more than one tenant lived in the home. Finally, she disputed Block’s claim that he learned the truth from her discovery responses, contending that she served “nothing but objections” on November 6, 2016.

Schaefer also contended that Block maliciously and prematurely attempted to secure a default in the UD action on October 3, 2016. In her declaration supporting her opposition, Schaefer stated that when she called Block’s office to discuss the case, he was hostile toward her, “daring me to take action and maliciously threatening me for not leaving the premises”; he also refused to meet and confer in good faith.

Schaefer attached an email she sent to Clements on August 11, 2016, after service of the 30-day notice to quit but prior to the initiation of the UD action. In the email, Schaefer informed Clements that she was entitled to a 60-day eviction notice under

Civil Code, section 1946.1. There is no evidence in the record that the email was provided to Block at that time.

Block filed a reply to the motion to strike. The same day, Schaefer filed a “rebuttal” to the reply.

Following a hearing on January 10, 2017, the court granted the motion to strike.<sup>3</sup> The court found Block met his initial burden to establish that the cause of action was subject to the anti-SLAPP statute. Turning to Schaefer’s burden, the court found she had not provided evidence to establish probable cause or malice.

Schaefer timely appealed.<sup>4</sup>

## DISCUSSION

### I. *The Record on Appeal*

As an initial matter, Block objects that his reply to the motion to strike was omitted from the record. He argues that, as a result, Schaefer has failed to provide an adequate record on appeal.

“[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment.”

(*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609; see generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 355, p. 409 [citing

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<sup>3</sup>The trial court granted Schaefer’s motion to proceed by settled statement in lieu of a reporter’s transcript for the hearing on the motion to strike. The settled statement submitted by Schaefer, to which Block did not object, indicated that the parties submitted on their papers at the hearing.

<sup>4</sup>An order granting a section 425.16 motion is immediately appealable. (§ 425.16, subd. (i); § 904.1, subd. (a)(13).)

cases].) “A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) “Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].” (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

Schaefer listed Block’s reply on the motion to strike in her notice designating the clerk’s transcript. However, the reply was omitted from the record; neither party filed a request to augment the record on appeal. We disagree with Block that the current record is insufficient to allow our meaningful review of the anti-SLAPP motion. Nevertheless, we requested Block’s reply from the trial court and have reviewed it. “While it is not the responsibility of this court to obtain the documents necessary to consider the parties’ arguments on appeal, we may use our discretionary authority under California Rules of Court, rule 8.155(a)(1)(A) to augment the appellate record with documents contained in the trial court record that were omitted by the parties, through mistake or neglect, in order to assist us in reviewing appeals on their merits.” (*State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1529, fn.1.) Thus, on our own motion, we augment the appellate record with Block’s reply to the motion to strike, filed in the trial court on December 21, 2016. We therefore proceed to the merits of this appeal.



## II. *Motion to Strike*

### A. *Section 425.16 and Standard of Review*

“A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so. “While SLAPP suits masquerade as ordinary lawsuits such as defamation and interference with prospective economic advantage, they are generally meritless suits brought primarily to chill the exercise of free speech or petition rights by the threat of severe economic sanctions against the defendant, and not to vindicate a legally cognizable right.” [Citations.]” (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21 (*Simpson*)).

“A special motion to strike a SLAPP action, codified in . . . section 425.16, provides a procedural remedy to gain an early dismissal of a lawsuit or a cause of action that qualifies as a SLAPP.” (*Slaney v. Ranger Ins. Co.* (2004) 115 Cal.App.4th 306, 309, fn. 1.) Section 425.16, subdivision (b)(1), authorizes the filing of a special motion to strike for “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.”

“The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.) Analysis of a motion to strike pursuant to section 425.16 involves a two-step process. (*Simpson, supra*, 49 Cal.4th at p. 21.) “First, the defendant must make a *prima facie* showing that the plaintiff’s

‘cause of action . . . aris[es] from’ an act by the defendant ‘in furtherance of the [defendant’s] right of petition or free speech . . . in connection with a public issue.’ (§ 425.16, subd. (b)(1).)” “If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.” (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76.) “Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to be stricken under the statute.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

We review the ruling on a special motion to strike *de novo*. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.) In engaging in the two-step analysis, we consider “the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b)(2).) Our Supreme Court has described the second step as a “summary-judgment-like procedure.” (*Baral v. Schnitt, supra*, 1 Cal.5th at p. 384, quoting *Taus v. Loftus* (2007) 40 Cal.4th 683, 714.) “The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a *prima facie* factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff’s evidence as true, and evaluates the defendant’s showing only to determine if it defeats the plaintiff’s claim as a matter of law.” (*Id.* at pp. 384-385; *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819–820; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3 (*Soukup*).) “Put another way, the plaintiff ‘must demonstrate that the complaint is both legally sufficient and supported by a sufficient *prima facie* showing of facts to

sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.) “[C]laims with the requisite minimal merit may proceed.” (*Navellier v. Sletten, supra*, 29 Cal.4th at p. 94.)

**B. *Schaefer Demonstrated a Probability of Prevailing***

Schaefer does not contest that her malicious prosecution claim arises from protected activity and that Block has therefore met his burden under the first prong of the anti-SLAPP analysis. (See *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734-736 [complaint for malicious prosecution arises out of act in furtherance of right of free speech or petition under section 425.16].) The sole issue on appeal is whether Schaefer met her burden under the second prong to demonstrate a probability of prevailing on her claim.

“To prevail on a malicious prosecution claim, the plaintiff must show that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause and (3) was initiated with malice.” (*Soukup, supra*, 39 Cal.4th at p. 292.) In addition, “an attorney may be held liable for malicious prosecution for continuing to prosecute a lawsuit discovered to lack probable cause.” (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 970 (*Zamos*).)

There is no dispute that Schaefer has met the first element of her malicious prosecution claim, as the UD action was terminated in Schaefer’s favor when Clements dismissed it. Schaefer contends she has also provided evidence to establish a *prima facie* case for the second and third elements. We agree.

The question of probable cause is “whether as an objective matter, the prior action was legally tenable or not.” [Citation.] ‘A litigant will lack probable cause for his action either if he relies upon facts which he has no reasonable cause to believe to be true, or if he seeks recovery upon a legal theory which is untenable under the facts known to him.’ [Citation] ‘In a situation of complete absence of supporting evidence, it cannot be adjudged reasonable to prosecute a claim.’” (*Soukup, supra*, 39 Cal.4th at p. 292.) Thus, “probable cause is lacking “when a prospective plaintiff and counsel do not have evidence sufficient to uphold a favorable judgment or information affording an inference that such evidence can be obtained for trial.”” (*Morrison v. Rudolph* (2002) 103 Cal.App.4th 506, 512, overruled in part on other grounds in *Zamos, supra*, 32 Cal.4th at p. 973.)

“The court must “make an objective determination of the ‘reasonableness’ of [defendant’s] conduct, i.e., to determine whether, on the basis of the facts known to [defendant], the institution [and prosecution] of the [lawsuit] was legally tenable.”” (*Zamos, supra*, 32 Cal.4th at p. 971.) “The test applied to determine whether a claim is tenable is “whether any reasonable attorney would have thought the claim tenable.”” (*Ibid.*)

As she did below, Schaefer argues she was entitled to a 60-day notice, rather than the 30-day notice issued under Civil Code, section 1946.5, for two reasons: (1) she was one of several tenants in the home, and Civil Code, section 1946.5 applies “only to owner-occupied dwellings where a single lodger resides” (Civ. Code § 1946.5, subd. (d)); and (2) she rented the premises from Clements for more than a year (Civ. Code § 1946.1 [permitting 30 instead of 60 days notice only if tenant “has resided in the

dwelling for less than one year”].) Block does not dispute the underlying facts that Schaefer rented the premises for over a year and was one of several tenants; he also does not dispute that, based on these facts, Schaefer was entitled to a 60-day notice to quit. Instead, he contends he relied on contrary information provided by Clements when initiating the UD action and therefore did not know the action lacked probable cause at the time. He further states that he dismissed the action as soon as he discovered otherwise.<sup>5</sup>

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<sup>5</sup>During oral argument on appeal, Block’s counsel suggested that Block believed at the time he filed the UD that Schaefer had *never* paid rent and was therefore only entitled to a 30-day notice as a “lodger.” He further argued that Block dismissed the UD after he received Schaefer’s discovery responses showing proof of payment of rent. We find this contention frivolous for several reasons. First, Block failed to raise it in his briefs. Second, he has provided no authority supporting the proposition that a “lodger” is defined as a tenant who does not pay rent. (See Civ. Code, § 1946.5, subd. (c) [defining “lodger” as “a person contracting with the owner of a dwelling unit for a room or room and board within the dwelling unit personally occupied by the owner, where the owner retains a right of access to all areas of the dwelling unit occupied by the lodger and has overall control of the dwelling unit.”].) Finally, the record belies this claim. The UD complaint alleged that pursuant to the written lease agreement, Schaeffer agreed to pay rent of \$750 per month. Further, the payment schedule attached to that complaint showed that Schaefer made her first payment under this agreement in 2013. And neither the discovery responses in the record nor Block’s explanation for the dismissal in his declaration support counsel’s suggestion that the UD was dismissed because Block received proof of rent payment in discovery.

We conclude that Schaefer has presented a prima facie case that it was objectively unreasonable for Block to institute the UD action and then continue to prosecute it for several months, based on the information he had at the time. The lease, dated 2013, was attached to the UD complaint when Block filed it in 2016, showing that Schaefer had lived at the residence for more than one year and triggering the 60-day notice requirement under Civil Code section 1946.1. Thus, the evidence Block had at the time showed that Schaefer was entitled to 60 days' notice but had only been provided 30 days' notice. In addition, Schaefer contended in her demurrer to the UD action that she was one of several tenants; that contention was confirmed by documents produced by Clements in discovery. Based on this information, Block knew or should have known that notice was inadequate, and therefore the action lacked probable cause. However, he continued to prosecute the UD for several weeks after serving Clements' discovery responses and documents, purportedly relying on Clements' original statement that Schaefer was a single lodger in the home.<sup>6</sup>

We next turn to Schaefer's showing of malice, the third element required to establish her malicious prosecution claim. "The "malice" element . . . relates to the subjective intent or purpose with which the defendant acted in initiating [or continuing] the prior action. [Citation.] The motive of the defendant must have been something other than that of bringing a perceived guilty person to justice or the satisfaction in a civil

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<sup>6</sup>We view this timing in the context of the summary nature of unlawful detainer proceedings. (See, e.g., §§ 1167.3 [five days for defendant to answer complaint], 1170.7 [five days' notice for motion for summary judgment].)

action of some personal or financial purpose. [Citation.] The plaintiff must plead and prove actual ill will or some improper ulterior motive.’ [Citation] . . . Malice ‘may range anywhere from open hostility to indifference. [Citations.] Malice may also be inferred from the facts establishing lack of probable cause.” (Soukup, supra, 39 Cal.4th at p. 292.) However, the inference of malice is not “automatic” from the absence of probable cause. (Grindle v. Lorbeer, (1987) 196 Cal.App.3d 1461, 1465, 1466; see also HMS Capital, Inc. v. Lawyers Title Co. (2004) 118 Cal.App.4th 204, 218 [“A lack of probable cause is a factor that may be considered in determining if the claim was prosecuted with malice [citation], but the lack of probable cause must be supplemented by other, additional evidence.”].) “Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence.’ [Citation.]” (Daniels v. Robbins (2010) 182 Cal.App.4th 204, 225 (Daniels).)

Applying these principles, in *HMS Capital, Inc. v. Lawyers Title Co.*, supra, 118 Cal.App.4th at p. 218, the court found sufficient evidence of malice where the defendants took no depositions, promulgated one set of interrogatories and refused to dismiss a baseless lawsuit without a payment of \$25,000. In *Daniels*, supra, 182 Cal.App.4th at p. 225, the court found an inference of malice based on evidence of a personal relationship between the plaintiff and defendant in the underlying litigation, and threats made by the plaintiff, supporting the inference that the plaintiff brought the baseless litigation in order to “exact revenge” against the defendant. On the other hand, the court refused to impute that malice to the underlying plaintiff’s attorneys. The additional evidence that the litigation lacked any

merit and that the attorneys were possibly negligent in failing to adequately investigate the plaintiff's factual assertions before instigating the litigation was insufficient to establish malice. (*Ibid.*) The court noted that "malice can be inferred when a party *continues* to prosecute an action after becoming aware that the action lacks probable cause"; however, in this case, it found no evidence to suggest that the attorneys *knowingly* brought or continued to pursue an action that lacked probable cause. (*Id.* at p. 226.)

Here, the evidence was sufficient for Schaefer to make a prima facie showing that Block—a veteran attorney with extensive UD experience—instituted and continued to prosecute the UD action with knowledge that the action lacked probable cause. Despite this information, Block did not dismiss the action until faced with Schaefer's motion for summary judgment. Further, Schaefer contends Block was hostile toward her and refused to meet and confer. In addition, Schaefer's evidence raises a factual dispute as to Block's explanation that he only realized the merits of Schaefer's claim once he received her discovery responses. Schaefer's discovery responses largely consisted of objections, with one or two statements repeating the information regarding multiple tenants and length of tenancy that Block already possessed. Thus, taking Schaefer's evidence as true, we find she demonstrated a probability of prevailing on her claim that Block acted with malice in the UD action. (See e.g., *Drummond v. Desmarais* (2009) 176 Cal.App.4th 439, 452 ["It is also said that a plaintiff acts with malice when he asserts a claim with knowledge of its falsity, because one who seeks to establish such a claim 'can only be motivated by an improper purpose.'"]; *Daniels, supra*, 182 Cal.App.4th at p. 226 ["[We]



conclude that malice formed after the filing of a complaint is actionable. ‘Continuing an action one discovers to be baseless harms the defendant and burdens the court system just as much as initiating an action known to be baseless from the outset.’ (*Zamos, supra*, 32 Cal.4th at p. 969.)”].)

Block’s contention that he was entitled to rely on the information supplied by Clements does not defeat this showing. While a lawyer “is entitled to rely on information provided by the client,” once the lawyer discovers the client’s statements are false, the lawyer cannot rely on such statements in prosecuting an action. (*Morrison v. Rudolph, supra*, 103 Cal.App.4th at pp. 512–513.) Here, Block was not entitled to continue to prosecute the UD action against Schaefer while ignoring the lease attached to his client’s complaint and the information in the discovery responses he served. These circumstances are sufficient to establish a prima facie case of malice and therefore meet Schaefer’s burden on the motion to strike.<sup>7</sup>

Finally, we reject Block’s cursory suggestion that Schaefer’s claim might be barred by the litigation privilege. As he recognizes, “[t]he only tort claim falling outside the litigation privilege is malicious prosecution.” (*Daniels, supra*, 182 Cal.App.4th at p. 216, citing *Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 360–361.) Indeed, in the portion of *Daniels* cited by Block, the court found the litigation privilege

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<sup>7</sup>In reaching this conclusion, we express no opinion as to the merits of Schaefer’s malicious prosecution claim. We simply hold she has met her burden of showing her claim has the sufficient merit required to survive an anti-SLAPP motion. (§ 425.16, subd. (b)(3).)

barred the plaintiff's tort claims *except for* the claim for malicious prosecution, which the court considered separately. (*Ibid.*)

**DISPOSITION**

The order granting Block's motion to strike pursuant to section 425.16 is reversed. Schaefer is awarded her costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

DUNNING, J.\*

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\*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.